

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0624

Sales Tax

Calendar Years 1996, 1997, and 1998

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ISSUE(S)

I. **Selling at Retail** – Unreported Sales

Authority: 45 IAC 2.2-6-8; IC 6-8.1-5-1

Taxpayer protests the sales attributed to calendar year 1998.

II. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 11-15-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The Taxpayer originally protested “buydowns” which is no longer an issue in the audit. A supplemental audit was prepared that reduced the assessment for intercompany sales for the year 1997. All of the taxpayer's related stores were closed on or before March 31, 1998. The Department was provided copies of four invoices from March 31, 1998 through October 1998 totaling \$89,169.13 representing sales to a closed store.

Taxpayer merely states that it did not ship merchandise to its other location after December 1997 and was months behind in receiving payments from that location. Further, it included these sales in its income for the months shown on the wholesale sales tickets but did not include them for sales tax purposes as they were wholesale sales.

I. **Selling at Retail** – Unreported Sales

DISCUSSION

Taxpayer protests the assessment of additional sales tax for sales made to a store that closed before March 31, 1998. Taxpayer states these are wholesale sales not subject to tax.

In reviewing the audit report and the file, it is noted that the assessment stems from sales made to one of its locations that no longer files sales tax returns. The taxpayer to whom the product was sold was no longer in business; therefore the merchandise must have reverted back to the taxpayer and is subject to sales tax.

FINDING

Taxpayer's protest is denied.

II. Tax Administration – Penalty

DISCUSSION

Taxpayer requests a penalty waiver.

Taxpayer failed to remit nearly nine percent (9%) of its sales tax due. Sales tax is a trust tax that should have been remitted to the Department.

Taxpayer has not provided reasonable cause to allow a waiver of the penalty assessed.

FINDING

Taxpayer's protest is denied.